Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GLEN SCOTT GIBSON,

Petitioner

VS.

SUE MACOMBER,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, under Georgia Law, or under the law of any state, the a litigant can be denied a direct appeal to a state court of appeals from a default judgment where lack of service and/or lack of "in personam" jurisdiction are asserted at the trial level through motions to vacate and set aside the default judgment?

2. When a Motion to Vacate and Set Aside a default judgment is filed and denied, is the deprivation of appellate review on the merits a violation of the constitutional rights to due process and equal protection? Conversely, does denial of discretionary appeal constitute a review on the merits?

3. Whether the Georgia law requirement of a discretionary appeal (pursuant to OCGA 5-6-35(a)(8) and OCGA 9-11-60(d)) from an order denying a Motion to Vacate and Set Aside a Default Judgment where it is

alleged that the judgment is invalid due to lack of jurisdiction arising from an alleged failure of service, violates equal protection and due process?

4. Should there be a constitutionally protected state remedy of a direct appeal from a default judgment, with a ruling on the merits of such appeal, when the lack of personal service is alleged at the trial court level?

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OPINIONS BELOW

On November 19, 1993 the Supreme Court of the State of Georgia, issued an order denying Petitioner's Motion for Reconsideration. A copy of this order is attached as Appendix A.

The Supreme Court of the State of Georgia issued an order on October 8, 1993 denying Petitioner's Petition for Writ of Certiorari. A copy of this order is attached as Appendix B.

On May 26, 1993, the Court of Appeals of the State of Georgia denied Petitioner's Application for Discretionary Appeal. A copy of this order is attached as Appendix C.

JURISDICTION

(i) The judgment sought to be reviewed is that of the Georgia Supreme Court in its denial of Petitioner Glen Scott Gibson's Application for Writ of Certiorari, said order dated the 8th day of October, 1993. Petitioner filed a Motion for Reconsideration to the Georgia Supreme Court which was denied on November 19, 1993.

(ii) No extension of time for the filing of this petition for a writ of certiorari has been applied for or granted.

(iii) No cross petition has been filed in this case, to the best of Petitioner or counsel's knowledge, information, and belief.

(iv) A) The statutory and/or Constitutional provision which, in the

opinion of the Petitioner, is believed to confer jurisdiction for review of this matter in the Supreme Court of the United States is Article III of the Constitution of the United States of America.

B) The statutory authority is as follows:

28 USC 1257. State courts: certiorari

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of any statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title , right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
> (b) For the purposes of

this section, the term "highest court of a State" includes the District of Columbia Court of Appeals".

CONSTITUTIONS AND STATUTORY PROVISIONS

U.S. Const. amend V

U.S. Const. amend. XIV, Section 1.

28 USC 1257. State Courts: certiorari

FRCP, Rule 55. Default

FRCP, Rule 60. Relief from Judgment or Order

OCGA 5-6-35. Cases in which application for appeal required; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order granting or denying appeal; procedure following grant of appeal; supersedeas.

OCGA 9-15-14. Litigation costs and attorney's fees assessed for frivolous actions and defenses.

OCGA 9-11-60. Relief from judgments.

STATEMENT OF THE CASE

The Petitioner in this action is Glen Scott Gibson, having a residence in Roswell, Fulton County Georgia.

The Respondent in this case is Sue Macomber who filed suit against the Petitioner in the State Court of Cobb County, Georgia, on the 20th day of November, 1989 alleging that Petitioner herein had caused her personal injuries. (Why the suit was not filed in the county of Petitioner's residence is not know.)

The gravamen of Petitioner's claim raised in the courts below is that he received no legal or other notice of such complaint and summons and that service upon him was not perfected as required by the due process standards of Georgia law.

Service of process of the Complaint and Summons was allegedly made upon

Petitioner at his home in Roswell, Fulton County, Georgia by a Deputy Sheriff of Cobb County, Georgia on November 23, 1989, which was in fact, Thanksgiving Day of that year. On that day Petitioner's son, Shaman Gibson, age 17 at the time, who was visiting Fairhope, Alabama at the home of his father and stepmother for the holiday, apparently accepted service of process from the Deputy Sheriff. The minor son, Shaman Gibson, was not a resident of the house at that time nor was he of majority.

Shaman Gibson failed to give his father the Complaint and Summons and, therefore, Petitioner received no notice, actual or otherwise, of the suit commenced by Respondent.

The default judgment against Petitioner was entered on the 16th day of October, 1990 in the amount of $150,000. ($75,000 actual damages and $75,000

punitive damages. See Appendix "E")

The Petitioner first learned of the legal action and the default judgment (for actual and punitive damages) at the time that efforts were made some months later by respondent to levy and execute upon the default judgment.

Subsequently, on the 22nd day of December, 1992, Petitioner filed with the State Court of Cobb County (the court issuing the default judgment in favor of the Respondent and against Petitioner) a Motion to Vacate and Set Aside the Judgment, accompanied by the affidavits supporting the allegations of non-service as well as the facts set forth above.

The trial court denied Petitioner's Motion to Vacate and Set Aside Judgment by its order dated April 1, 1992. (See copy of Appendix "D".)

Though the following is not the legal

theory that brings Petitioner to this Court, the Cobb County State Court erred when it denied Petitioner's Motion to Vacate and Set Aside (Default) Judgment for these reasons: 1) Petitioner was not a resident of Cobb County 2) The Petitioner's son was not of age nor was he a resident of the home, although he did accept service for his father, and then further neglected to inform his father of the Complaint or give him a copy of said Complaint, all of which is shown in Shaman Gibson's affidavit. Under Georgia Law, as cited by Petitioner to the appellate courts in Georgia below, such service is defective as a matter of law; and 3) after reviewing the Cobb County Deputy Sheriff's affidavit supporting his return of service, it would appear that there is no direct repudiation of the facts set forth above by Petitioner; the Deputy Sheriff merely sets forth

conclusory statements that he does things a certain way every time he serves someone and he therefore assumed that he did so as to Petitioner on November 23, 1989 as he always had done in other cases. The Deputy Sheriff does not say definitively that he remembers whether he did serve the Petitioner that Thanksgiving Day of 1989.

It is Petitioner's belief that the Motion to Vacate and Set Aside Judgment should have been granted and that he should have been given his day in court.

After said Motion to Vacate and Set Aside Judgment was denied, the Petitioner, as required by Georgia law, followed the procedure set forth in OCGA 5-6-35(a)(8) by filing a pleading styled "Application for Appeal" in the Georgia Court of Appeals. According to Georgia Law, direct appeals of denials of motions to vacate and set aside (default) judgments are not authorized.

Such appeals must be discretionary with the Appellate Court. Georgia law says (excerpt only):

> OCGA 5-6-35. Cases in which application required; contents, filing , and service by opposing party; issuance of appellate court order granting or denying appeal; procedure following grant of appeal; supersedeas.
>
> (a) Appeals in the following cases shall be taken as provided in this Code section;
>
> (8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;

The above code section references another provision of Georgia law, in the Civil Practice Act section, which is excerpted below.

> OCGA 9-11-60. Relief from judgments.
>
> (d) Motion to set aside. A motion to set aside may be brought to set aside a judgment based upon:

> (1) Lack of jurisdiction over the person or the subject matter;
>
> (2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or
>
> (3) A nonamendable defect which appears upon the face of the record or pleadings. Under this paragraph, it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.

The procedure followed by Petitioner is described as a "discretionary" appeal, on the theory that the Georgia Court of Appeals, the intermediate Appellate Court in Georgia, must first review the matter and grant permission to appeal the objectionable order.

The Georgia Court of Appeals denied Petitioner's request to appeal, <u>without opinion</u>, on the issue of whether service of the Complaint and Summons was

perfected to allow for "in personam" jurisdiction, according to Georgia law upon the Petitioner (See Appendix "C").

The Petitioner then sought a Writ of Certiorari to the Georgia Supreme Court on the issue of personal service and "in personam" jurisdiction, but again was denied without any substantive review or opinion (See Appendix "B").

Petitioner then filed a Motion to Reconsider with the Georgia Supreme Court again on the issues of "in personam" jurisdiction which denial was without any substantive review or opinion (See Appendix "A").

And now the Petitioner files this request for a review of the applicable Georgia statutes OCGA 5-6-35(a)(8) and OCGA 9-11-60(d)(1), as applied to the facts of this case. This portion is to have such statutory law examined with the facts of

this case in the context of the Georgia and the United States Constitutions. It will be clear that both constitutions are identical for due process and equal protection claims. There is a difference between the Federal Rules of Civil Procedure under Rule 60(b)(4) (which allows a direct appeal) and the Official Code of Georgia 9-11-60(d)(1) and OCGA 5-6-35 which allows only for discretionary appeals.

SUMMARY OF LEGAL ARGUMENTS

The facts of this case are simple, but the inequities, and ramifications of Georgia Law are great.

Georgia law mandates discretionary appeals from judgments issued by default even when personal service or "in personam" jurisdiction are at issue and are raised by OCGA 5-6-35(a)(8). The Georgia Supreme Court has held that it would be unfair to

the Plaintiff who has received judgment by default to allow direct appeals, because Plaintiff may have already relied upon such judgment of the trial court Schiesser v. Ross, 349 S.E.2d 745 (Ga. 1986). In Schiesser supra. the Georgia Supreme Court has placed reliance of the Plaintiff on a default judgment, so easily gained, above the constitutional rights of due process and equal protection afforded Defendant by the constitution.

Georgia Courts strictly construe service of process requirements because notice is the bedrock of due process McGowan v. W.S. Badcock Corp., 144 Ga.App. 255, 240 S.E.2d 779 (1977). As such, when personal jurisdiction is at issue and a void judgment results, the 11th Circuit Court of Appeals allows for direct appeal under FRCP Rule 60(b)(4), where the Georgia Appeals Court does not, under OCGA 9-11-

60(d)(1), and OCGA 5-6-35(a)(b).

The fundamental idea of due process of law is guaranteed by both the Federal and State Constitutions and includes notice and a hearing as a matter of right where one's property rights are involved Dansby v. Dansby, 222 Ga. 118, 149 S.E.2d 242 (1966), Hamilton v. Edwards, 245 Ga. 810, 267 S.E.2d 246 (1980). Law v. United States Department of Agric., 366 F.Supp. 1233 (N.D. Ga. 1973). There must be some form of a hearing before there can be a deprivation of constitutionally protected rights, in any court, Federal or State.

The fundamental requirement of due process in proceedings to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections Hamilton v. Edwards, 245 Ga. 810, 267

S.E.2d 246 (1980).

Nothing short of notice of a proceeding and opportunity to be heard in opposition thereto will satisfy the Due Process Clause of the State Constitution Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980). A statute complies with due process where it provides for notice and a hearing as a matter of right, either in express terms or by necessary implication.

Petitioner contends that because OCGA 5-6-35(a)(8) requires a discretionary appeal, even as to matters of "in personam" jurisdiction, and does not provide for an appellate review or a hearing as a matter of right, even when the notice requirements of due process have not been adhered to, such does not comply with due process or equal protection.

In Brooks vs. Federal Land Bank of Columbia, 193 Ga.App. 591, 388 S.E.2d 704,

705 (1989), the Court held that the grant of the appellees OCGA 9-11-60(g) motion is a final Order which is directly appealable by the appellant. The denial of the appellant's OCGA 9-11-60(d) motion (such as Appendix "D") is also a final order, but is not directly appealable because of the applicability of the provision of OCGA 5-6-35(a)(8). Accordingly, the initial issue resolved by that Court was whether or not the Court had jurisdiction to address the denial of the appellant's OCGA 9-11-60(d) motion.

The Supreme Court of Georgia made a similar ruling in State Farm Mutual Automobile Insurance Company vs. Yancey 254 Ga. 802, 375 S.E.2d 39,40 (1989) in which case they held that a statute requiring filing of a discretionary application to review the trial Court's denial of the a motion for summary judgment cannot be

circumvented by filing a direct appeal from a denial of a motion for new trial, which also includes a denial of motion to set aside judgment under OCGA 5-6-35(a)(8).

The Court held in State Farm v. Yancey that a careful reading of OCGA 5-6-35 "leads them to the inescapable conclusion that the legislation never intended for the application procedure to be circumvented, as the statute begins by, appeals in the following cases shall be taken as provided in this Code Section and goes on to include within the following cases appeals from Orders "denying a Motion to Set Aside Judgment". OCGA 5-6-35(a)(8) subsection (b) provides: all appeals taken in cases specified in this subsection (a) of this Code Section shall be by application. Thus the statute makes it clear that, application must be filed to appeal from an order denying a Motion to Set aside

Judgment to secure review from the denial of a Motion to Set Aside under OCGA 9-11-60(d).

State Farm v. Yancey was reversed January 10, 1994.[1] The recent Supreme

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[1] State Farm Mutual Insurance Company v. Yancey, 254 Ga. 802, 375 SE2d 39 (1989) was reversed by Martin v. Williams, No. S93G1090 (Jan. 10, 1994) (94 Fulton County Daily Report 174). The Court's reason for reversal was that, "although the motion in this case was styled a motion for new trial and a motion to set aside, it was clearly only a motion for new trial, as it raised issues relating to the verdict but not relating to a motion to set aside under section 9-11-60(d). Because substance, rather than nomenclature, governs pleadings, Cotton v. Federal Land Bank, 246 Ga. 188 (269 S.E.2d 422) (1980); Bank of Cumming v. Moseley, 243 Ga. 858 (257 S.E.2d 278) (1979) the appellants were appealing only from the denial of a motion for new trial. As the denial of that motion was directly appealable, the Court of Appeals erred in dismissing the appeal". The Court noted, "[a]s this review demonstrates, this Court's affirmance in Yancey does not stand for the proposition that a directly appealable order denying a motion for new trial becomes subject to the application requirements of section 5-6-35 because the appellant is also seeking to appeal from the denial of a motion to set aside. To

Court ruling in Martin v. Williams, No. S93G1090 (Jan. 10, 1994) (94 Fulton County Daily Report 174) is a clear example of how entrenched the law is in the Georgia Courts as the requirement of the discretionary procedure under OCGA 5-6-35(a)(8). While the Supreme Court of Georgia speaks of substance, rather than nomenclature, they have apparently overlooked the substance behind either a motion for new trial or motion to set aside judgment. Either motion could and should return the parties to the starting point where a new suit could be heard on the merits.

It would stand logic on its head to

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the contrary, Yancey, 258 Ga., only stands for the proposition that if a party is appealing directly from a denial of a motion for new trial, the party may not add to that appeal issues relating to a denial of a motion to set aside a judgment that, standing alone, would be subject to the application procedures of section 5-6-35". Martin v. Williams, No. S93G1090 (Jan. 10, 1994) (94 FCDR 174) p. 174.

say that one who seeks redress can get an appeal directly by styling his relief a Motion for New Trial" while a discretionary appeal must be had for "Motion to Vacate and Set Aside" in circumstances where the goal is the same. This discrepancy creates the constitutionally vague problem violating Equal Protection and Due Process.

Federal Courts take the directly opposite view to that of Georgia. Appeals from judgments that are void for lack of jurisdiction over the person or the subject matter are directly appealable and not discretionary under FRCP 60(b)(4).

In the case of Combs v. Nack Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987) the Court noted the potentially crucial difference between subparts (b)(4) of FRCP Rule 60. A motion to set aside a judgment pursuant to Rule 60(b)(1) is committed to the discretion of the trial

court and any ruling thereon will be reversed on appeal only if that discretion is abused. The appeal, however, is direct. In contrast, there is no question of discretion on the part of the trial Court when the motion is filed under Rule 60(b)(4); if the judgment is void, relief is mandatory. Moreover, different elements must be considered in evaluating the applications under the two... A judgment "is void only if the Court that rendered it lacked jurisdiction of subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law" Marshall v. Board of Education, 575 F.2d 417, 422 (3rd Cir. 1978).

The enforcement of procedural rules for punitive default judgments might offend the standards of due process Societe International v. Rogers, 357 US 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1955). In the

case of Winfield Associates, Inc. v. Stonecipher, 429 F.2d 1087, 1091 (1970), the Court discussed Appellant's point with regard to Federal Rule 55(b)(2) to be that since Illinois's district court did not comply with notice provisions of Rule 55(b)(2) and therein violated the fundamental principles of due process; therefore the court lacked the power and the jurisdiction to enter a default judgment under Rule 55(b), and that the default judgment was entered in derogation of Rule 55(b).

In Winfield supra. the 10th Circuit Court of Appeals affirmed the district court's decision holding that the case presented a situation of excusable neglect and that the Appellant's failure to pursue the adequate and available legal remedy of appeal at the time of the issuance of default judgment was clearly a sufficient

basis for denial of any equitable relief from a default judgment. Had the Appellant in Winfield not deliberately bypassed his available remedies of direct appeal at the time of issuance of default judgment, the outcome of the appeal may have been different.

In the case at bar, Petitioner Gibson has been foreclosed from either a direct appeal (because the Georgia Statute does not allow it) or by a separate complaint in equity for relief from default judgment. Under OCGA 9-11-60(e), Complaints in Equity to set aside a judgment have been prohibited since the repeal and amendment of that section of the Georgia Code in 1986. And, as discussed earlier, OCGA 5-6-35(a)(8) also prohibits direct appeals.

Petitioner does not contend that the other 10 sub-sections of OCGA 5-6-35(a) requiring discretionary appeals should

allow for direct appeals, for the reasons stated below.

In OCGA 5-6-35(a)(1), decisions of the Superior Courts reviewing decisions of the State Board of Workman's Compensation or the Board of Education or, Auditors, State and Local Administration Vacancies, cases have already been litigated at a lower level and then reviewed by the Superior Court which do not allow for a later direct appeal. In such cases, the aggrieved party has had an extra bite at the apple or has at least had two chances to litigate the issues of his case on the merits. Gibson has not had such an opportunity.

In OCGA 5-6-35(a)(2), appeals from judgments or orders in divorce, alimony, child custody or other domestic cases, arise from cases that have also been fully litigated at the Superior Court level with the notice requirement being satisfied, and

with the parties attending. Also, those are such fact driven cases as would make it proper for a review of such cases to be discretionary.

OCGA 5-6-35(a)(3) applies to appeals from cases involving a distress or dispossessory warrant where the only issues involved would be rent due less than $2,500.

OCGA 5-6-35(a)(4) applies to cases involving garnishment or attachment. Again this section applies to cases that have already had judgment entered after hearing.

OCGA 5-6-35(a)(5) applies to orders revoking probation. Again, this is a situation where there has already been a final judgment in criminal cases with the Defendant present at trial.

OCGA 5-6-35(a)(6) involves appeals in all actions for damages in the amount of $10,000 or less. This is also a section

involving cases where there has been an adjudication on the merits below.

OCGA 5-6-35(a)(7) applies to appeals when separate from an original appeal, from denial from an extraordinary motion for new trial. There again, the Petitioner has had his day in court.

OCGA 5-6-35(a)(9) applies to appeals from orders granting or denying a temporary restraining order. Due to the length of time it takes to get in to the Court of Appeals and out of the Court of Appeals, temporary restraining orders would have already of run their course one way or the other by the time the issue is heard or not heard.

OCGA 5-6-35(a)(10) applies to appeals from awards of attorneys fees and expenses of litigation under the Georgia code section OCGA 9-15-14. OCGA 9-15-14 allows a motion to be filed subsequent to or after

judgment has been rendered in a particular case; thus the parties have already litigated their case on the merits.

OCGA 5-6-35(a)(11) applies to appeals from decisions of State Courts reviewing decisions of the Magistrate Courts by "de novo" trial proceedings so long as the subject matter is not otherwise subject to the right of direct appeal. These cases would have already had been heard and tried on the merits at least twice, and as such, a higher court would have already affirmed or repudiated the act of the lower court.

In all ten of the above mentioned sub-sections (excluding OCGA 5-6-35(a)(8)), the litigants would have had a full hearing on the merits of their case after service, with both parties present; and in most cases have had a second round or at least one other higher court to render a decision as to the merits of the case on decision

below.

OCGA 5-6-35(a)(8) is really the only one sub-section out of the list of eleven sub-sections arising under OCGA 5-6-35(a) that could potentially results in a void judgment without a right to have such reviewed on its merits. The discretionary nature of this code section as to sub-section (8), makes it entirely possible for many judgments to be entered without due process of law as guaranteed by the constitution.

REASONS FOR GRANTING WRIT OF CERTIORARI

This writ of certiorari should be granted simply because the non-decisions of the Georgia Supreme Court and the Georgia Court of Appeals do not provide Petitioner with an explanation. Federal procedure clearly differs from Georgia's procedure which appears to deny a remedy of direct appeal to the aggrieved party. An opinion

from some state level appellate court is a necessary and required affirmation or repudiation of the acts of the trial judge.

A void judgment (and that is what petitioner contends exists in this case) is always to be entertained by any Court. When entertained, relief must be afforded, at least in the form of an order or opinion addressing the merits, granting or denying the relief sought.

An adjudication on the merits is warranted in a fact driven case such as the one at bar, particularly where the case results in a rather punitive default judgment for $150,000 against Petitioner which is, according to Petitioner, founded on the flimsy and evanescent topsoil of inadequate service of process.

Federal and State Courts have held on many occasions, the latest of which is Printed Media Services Inc. v. Sulna Webb

Inc., U.S. Court of Appeals, November 15, 1993, Case No. 93-1328, that without "in personam" jurisdiction, the judgment may be attacked at any time and cannot carry the force of law. Even under OCGA 9-11-60(f), a judgment void because of lack of jurisdiction over the person or subject matters may be attacked at any time.

How can such void judgment be attacked if no appellate court rules on the merits of same? A judgment rendered by a court without jurisdiction is void and subject to collateral or direct attack Jones v. Watts, 142 F.2d 575 (5th Cir. 1944); Comprehensive Merchandising Catalogs, Inc. v. Madison Sales Corp., 521 F.2d 212 (7th Cir. 1975); see also McDonald v. Magbee, 243 U.S. 90, 37 S.Ct. 343 (1917); Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1877); Thompson v. Whitman, 18 Wall. 457, 21 L.Ed 897 (1873). Petitioner realizes this authority is

pertinent only where the issue of jurisdiction is neither litigated by the parties in their original action nor previously determined in an independent proceeding. However, in the case at bar, Petitioner's son was served outside of his father's jurisdiction, and thus the Cobb County Court even did not have personal jurisdiction over the Petitioner. Also, as litigated in the Cobb State Court, Petitioner argued ineffective service of process, and lack of personal jurisdiction on which the trial court held that service was sufficient. If a party puts the issue of personal jurisdiction before the court, which then finds that jurisdiction was properly established, that decision is conclusive unless reversed on direct appeal. See American Surety Co. v. Baldwin, 287 U.S. 156, 53 S.Ct. 98 (1932); Baldwin v. Traveling Men's Association, 283 U.S.

522, 51 S.Ct. 517 (1931). No direct appeal was ever available.

Under the 5th and 14th Amendments of the United States Constitution, if Georgia has some rationale basis for its statutory framework setting up OCGA 5-6-35(a)(8) and OCGA 9-11-60(b), such is in direct conflict with the above constitutional amendments of due process and equal protection, which grants no right without also providing a remedy. Redress of the discretionary posture of OCGA 5-6-35(a)(8) and OCGA 9-11-60(b) is needed in order to prevent the reoccurring nature of such statutes from escaping review.

STATEMENT FOR CONCLUSION

To say that the Georgia Courts have the inherent statutory power to deny all right to direct appeal, from a potentially void judgment, without any opinion as to the merits, is, "in the very

nature of things, to convert the court exercising such authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends".[2]

WHEREFORE; the Petitioner prays that for the reasons, based upon the facts viewed most favorably to Petitioner, this Petition for Certiorari should be granted.

Respectfully submitted:

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[2] T.11 "Justice White" (partial cite), Hovey v. Elliott, 167 U.S. 409, 411, 17 S.Ct. 841, 843 (1987).

SUPREME COURT OF GEORGIA

ATLANTA NOVEMBER 19, 1993

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Case No. S93C1668

GLEN SCOTT GIBSON V. SUE MACOMBER

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract copy from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court affixed the day and year last above written.

Sherie M. Welch, Clerk.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: OCTOBER 08, 1993

Louis Levenson
LOUIS LEVENSON & ASSOCIATES
125 Broad Street, S.W.
Atlanta, GA 30303

Case No. S93C1668

GLEN SCOTT GIBSON V. SUE MACOMBER

COURT OF APPEALS CASE NO. A93D0174

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk

Appendix C-38

Court of Appeals of the State of Georgia

Atlanta, May 26, 1993

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

Case No. A93D0174

GLEN SCOTT GIBSON V. SUE MACOMBER

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby denied.

97-021

89A009238

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

S/Victoria McLaughlin

Appendix D-40

IN THE STATE COURT OF COBB COUNTY

STATE OF GEORGIA

SUE MACOMBER,	)	
	)	CIVIL ACTION
Plaintiff,	)	FILE NO.
vs.	)	89A-009238
	)	
GLEN SCOTT GIBSON,	)	
	)	
Defendant.	)	

ORDER

The Motion to Vacate and Set Aside Judgment having come on regularly to be heard, with both parties present through counsel, and the Court having considered the entire record as well as the affidavits of the Movant and the Court having considered the affidavit of Deputy Sheriff Bushey;

Now Therefore, The Court finds as follows:

1.

The Court finds that service was sufficient as required by law under OCGA 9-11-4 and, based on the above, the motion to vacate and set aside the judgment is hereby denied.

So ordered this 1 day of April, 1993.

S/S. Lark Ingram
The Honorable S. Lark Ingram
State Court of Cobb County

Appendix E-42

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

SUE MACOMBER,	)	
	)	CIVIL ACTION
Plaintiff,	)	FILE NO.
vs.	)	89A-009238
	)	
GLEN SCOTT GIBSON,	)	
	)	
Defendant.	)	

ORDER

Upon hearing evidence presented by the Plaintiff in this case and considering same;

IT IS HEREBY ORDERED, that the Defendant pay unto the Plaintiff the sum of $75,000.00 for general and special damages and additionally, the Defendant shall pay to the Plaintiff the sum of$75,000.00 as punitive damages. Thus the sum total due from the Defendant payable to the Plaintiff is a total

of $150,000.00.

This 16th day of October, 1990.

S/Michael Stoddard
Judge, W. Michael B. Stoddard
State Court of Cobb County

Submitted by:

S/Robert E. Richardson
Robert E. Richardson
Attorney for Plaintiff
State Bar No. 604094
3826 Atlanta Road
Smyrna, Georgia 30080-5936
(404) 436-6337